

103^D CONGRESS
2^D SESSION

H. R. 4003

To authorize appropriations for fiscal year 1995 for certain maritime programs of the Department of Transportation, to amend the Merchant Marine Act, 1936, as amended, to revitalize the United States-flag merchant marine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1994

Mr. STUDDS (for himself, Mr. FIELDS of Texas, Mr. LIPINSKI, and Mr. MANTON) (all by request) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize appropriations for fiscal year 1995 for certain maritime programs of the Department of Transportation, to amend the Merchant Marine Act, 1936, as amended, to revitalize the United States-flag merchant marine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—MARITIME ADMINISTRATION**

4 **AUTHORIZATION OF APPROPRIATIONS**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Maritime Administra-
7 tion Authorization Act for Fiscal Year 1995”.

1 **SEC. 102. AUTHORIZATION OF APPROPRIATIONS FOR FIS-**
2 **CAL YEAR 1995.**

3 Funds are authorized to be appropriated without fis-
4 cal year limitation, as Appropriations Acts may provide
5 for the use of the Department of Transportation, for the
6 fiscal year ending September 30, 1995, as follows:

7 (1) For payment of obligations incurred for op-
8 erating-differential subsidy, not to exceed
9 \$214,356,000.

10 (2) For expenses necessary for operations and
11 training activities, not to exceed \$77,000,000, in-
12 cluding reception and representation expenses asso-
13 ciated with graduation functions at the Merchant
14 Marine Academy at Kings Point, New York.

15 (3) For expenses necessary to acquire and
16 maintain the Ready Reserve Force surge shipping
17 and resupply capability in an advanced state of read-
18 iness, and for related programs, not to exceed
19 \$250,000,000.

20 (4) For the costs, as defined in section 502 of
21 the Federal Credit Reform Act of 1990, of guaran-
22 teed loans authorized by title XI of the Merchant
23 Marine Act, 1936, as amended (46 App. U.S.C.
24 1271, et seq.), \$50,000,000. In addition, for admin-
25 istrative expenses related to loan guarantee commit-
26 ments under title XI of the Merchant Marine Act,

1 1936, as amended (46 App. U.S.C. 1271, et seq.),
2 \$4,000,000.

3 **SEC. 103. MERCHANT SHIP SALES ACT OF 1946 AMEND-**
4 **MENT.**

5 Section 11 of the Act of March 8, 1946 (50 App.
6 U.S.C. 1744, is amended as follows:

7 (1) By striking “Secretary of the Navy,” in
8 subsection (b)(2) and inserting “Secretary of
9 Defense,”.

10 (2) By striking subsection (c) and redesignating
11 subsection (d) as subsection (c).

12 **SEC. 104. SUBMISSION OF REPORT ON CONDITION OF PUB-**
13 **LIC PORTS.**

14 Section 308(c) of title 49, United States Code, is
15 amended by inserting “even-numbered” between “each”
16 and “year”.

17 **TITLE II—AMENDMENTS TO THE**
18 **MERCHANT MARINE ACT, 1936**

19 **SEC. 201. SHORT TITLE.**

20 This title may be cited as the “Maritime Security and
21 Trade Act of 1994”.

22 **SEC. 202. MARITIME SECURITY PROGRAM.**

23 (a) Title VI of the Merchant Marine Act, 1936, as
24 amended (46 App. U.S.C. 1171 et seq.), is amended by
25 deleting the heading of title VI, “Operating-Differential

1 Subsidy” and inserting a new heading and subheading as
2 follows:

3 **“TITLE VI—OPERATING-DIFFERENTIAL**
4 **SUBSIDY AND MARITIME SECURITY**
5 **PROGRAM.**

6 **“Subpart A—Operating-Differential Subsidy”.**

7 (b) Section 605(b) (46 App, U.S.C. 1175(b)) is
8 amended to read as follows:

9 “(b) No operating-differential subsidy shall be paid
10 for the operation of a vessel that is more than twenty-
11 five years of age, unless the Secretary of Transportation
12 has determined, before the enactment of the Maritime Se-
13 curity and Trade Act of 1994, that it is in the public inter-
14 est to grant such financial aid for the operation of such
15 vessel.”.

16 (c) Title VI of the Merchant Marine Act, 1936, as
17 amended (46 App. U.S.C. 1171 et seq.) is amended by
18 adding a new section 616 following section 615, to read
19 as follows:

20 “SEC. 616. (a)(1) The Secretary of Transportation
21 may authorize a contractor operating a liner vessel and
22 receiving an operating-differential subsidy under subpart
23 A of this title to construct, reconstruct, or acquire a liner
24 vessel of over five thousand deadweight tons worldwide to
25 replace a vessel that would reach the end of its

1 subsidizable life prior to the expiration of the contractor's
2 operating-differential subsidy contract. The replacement
3 vessel shall be documented under chapter 121 of subtitle
4 II of title 46, United States Code.

5 “(2) A replacement liner vessel shall not be eligible
6 for operating-differential subsidy pursuant to subpart A
7 of this title, and shall be limited to payments in the
8 amounts set forth in subpart B of the title until the exist-
9 ing contract pursuant to subpart A terminates according
10 to its terms.

11 “(b)(1) The Secretary of Transportation may author-
12 ize a contractor operating a bulk cargo vessel and receiv-
13 ing operating-differential subsidy under subpart A of this
14 title to construct, reconstruct, or acquire a bulk cargo ves-
15 sel of over five thousand deadweight tons worldwide to re-
16 place a vessel that would reach the end of its subsidizable
17 life prior to the expiration of the contractor's operating-
18 differential subsidy contract. The replacement vessel shall
19 be documented under chapter 121 of subtitle II of title
20 46, United States Code.

21 “(2) A replacement bulk cargo vessel shall continue
22 to receive an operating-differential subsidy under an exist-
23 ing contract pursuant to subpart A of this title until the
24 existing contract terminates according to its terms.

1 “(c) Liner vessels and bulk cargo vessels constructed
2 pursuant to subsections (a) and (b) of this section shall
3 be deemed to have been built in a domestic shipyard for
4 the purposes of section 610 of this Act: *Provided*, That
5 the provisions of section 607 of this Act shall not apply
6 to vessels constructed, reconstructed, or acquired pursuant
7 to subsections (a) and (b) of this section.

8 “(d) Any existing foreign-built liner vessel that is ac-
9 quired pursuant to subsection (a) of this section and docu-
10 mented under chapter 121 of subtitle II of title 46, United
11 States Code, shall be less than five years of age at the
12 time of such documentation.

13 “(e) Any existing foreign-built bulk cargo vessel that
14 is acquired pursuant to subsection (b) of this section and
15 documented under chapter 121 of subtitle of title 46,
16 United States Code, shall be less than five years of age
17 at the time of such documentation.

18 “(f) No authority granted by the Secretary of Trans-
19 portation to construct, reconstruct, or acquire vessels pur-
20 suant to subsections (a) and (b) of this section may be
21 sold, assigned, conveyed, leased or otherwise transferred
22 to any other party, without the written consent of the Sec-
23 retary of Transportation pursuant to section 608 of this
24 title.

1 “(g) any repair or alteration necessary to bring a ves-
2 sel, which is constructed, reconstructed, or acquired pur-
3 suant to subsections (a) and (b) of this section, into com-
4 pliance with parts B and C of subtitle II of title 46, United
5 States Code, or any regulations prescribed under those
6 Parts, shall be performed in a privately owned shipyard
7 in the United States.”.

8 (d) Title VI of the Merchant Marine Act, 1936, as
9 amended (46 App. U.S.C. 1171 et seq.) is amended by
10 adding a new section 617 following the new section 616,
11 to read as follows:

12 “SEC. 617. (a) After the date of enactment of the
13 Maritime Security and Trade Act of 1994, the Secretary
14 of Transportation shall not enter into any new contract
15 for an operating-differential subsidy under subpart A of
16 this title.

17 “(b) Notwithstanding any other provision of this Act,
18 any operating-differential subsidy contract in effect under
19 title VI on the day before the date of enactment of the
20 Maritime Security and Trade Act of 1994—

21 “(1) shall continue in effect and terminate as
22 set forth in the contract, unless voluntarily termi-
23 nated at an earlier date by the persons (other than
24 the United States Government) that are parties to
25 the contract; and

1 “(2) may not be renewed or extended.

2 “(c) After the date of enactment of the Maritime Se-
3 curity and Trade Act of 1994, an owner or operator of
4 a vessel covered by an operating-differential subsidy con-
5 tract under subpart A of this title may operate such vessel
6 in the foreign commerce of the United States without re-
7 striction, notwithstanding any other provision of this Act.

8 “(d) With respect to a liner vessel—

9 “(1) whose operator receives operating-differen-
10 tial subsidy pursuant to a contract under this title,
11 which is in force on October 1, 1993, and if the Sec-
12 retary approves the replacement of such vessel with
13 a comparable vessel, or

14 “(2) covered by an operating agreement under
15 subpart B of this title, and if the Secretary approves
16 the replacement of such vessel with a comparable
17 vessel for inclusion in the fleet established under
18 subpart B of title VI,

19 such vessel may be transferred and registered under the
20 flag of an effective United States-controlled foreign flag,
21 notwithstanding any other provision of law: *Provided,*
22 That the vessel is available to be requisitioned by the Sec-
23 retary of Transportation pursuant to section 902 of this
24 Act (46 App. U.S.C. 1242).”.

1 (e) Title VI of the Merchant Marine Act, 1936, as
2 amended (46 App. U.S.C. 1171 et seq.) is amended by
3 adding a new subpart B to read as follows:

4 **“Subpart B—Maritime Security Program**

5 **“SEC 650. ESTABLISHMENT OF FLEET.**

6 “(a) The Secretary of Transportation shall encourage
7 the establishment of a fleet of active, militarily useful, pri-
8 vately-owned liner vessels to maintain an American pres-
9 ence in international commercial shipping and meet na-
10 tional defense and other security requirements. The fleet
11 shall consist of privately-owned, United States-flag liner
12 vessels for which there are in effect operating agreements
13 under this subpart.

14 “(b) A liner vessel may not be included in the fleet
15 unless—

16 “(1) it is operated by an ‘ocean common car-
17 rier’ as defined in section 3 of the Shipping Act of
18 1984 (46 App. U.S.C. 1702);

19 “(2) it is a vessel that is fifteen years of age
20 or less on the date an operating agreement is en-
21 tered into under section 651, unless the Secretary of
22 Transportation, in consultation with the Secretary of
23 Defense, determines that it is in the national inter-
24 est to waive this requirement;

1 “(3) it is a vessel that is less than five years
2 of age at the time it is documented under chapter
3 121 of subtitle II of title 46, United States Code, if
4 it is foreign-built;

5 “(4) the Secretary of Transportation, after con-
6 sultation with the Secretary of Defense, determines
7 that the vessel is necessary to maintain a United
8 States presence in international commercial shipping
9 or determines that the vessel is militarily useful for
10 meeting the sealift needs of the United States with
11 respect to national emergencies; and

12 “(5) the owner or operator of the vessel is a cit-
13 izen of the United States as set forth in section 651.

14 **“SEC. 651. OPERATING AGREEMENTS.**

15 “(a) The Secretary of Transportation shall require,
16 as a condition of including any vessel in the fleet, that
17 the owner or operator of the vessel enter into an operating
18 agreement with the Secretary of Transportation pursuant
19 to this section.

20 “(b) An operating agreement pursuant to this section
21 shall require that, during the period of the agreement—

22 “(1) each vessel covered by the operating agree-
23 ment—

24 “(A) shall be operated exclusively in the
25 foreign trade, and

1 “(B) shall not be operated in the coastwise
2 trade of the United States or in mixed domestic
3 and foreign trade; and

4 “(2) the owner or operator of a vessel covered
5 by the operating agreement shall have the vessel
6 documented under chapter 121 of subtitle II of title
7 46, United States Code, and shall maintain that
8 documentation.

9 “(c) An owner or operator of a vessel covered by an
10 operating agreement under this subpart may operate this
11 vessel in the foreign commerce of the United States with-
12 out restriction.

13 “(d)(1) The Secretary of Transportation is author-
14 ized to enter into operating agreements, provided that the
15 total does not exceed \$1,000,000,000 for the fiscal years
16 1995 through 2004.

17 “(2) An operating agreement pursuant to this section
18 shall provide that the Secretary of Transportation pay to
19 the owner or operator of each liner vessel that is included
20 in the operating agreement, an amount per vessel per year
21 that does not exceed \$2,500,000, for fiscal years 1995
22 through 1997, and does not exceed \$2,000,000, for fiscal
23 years 1998 through 2004. The amount per year paid to
24 the owner or operator of a liner vessel under an operating

1 agreement pursuant to this section shall be paid at the
2 end of each month in equal installments.

3 “(3) An amount of \$1,000,000,000 is appropriated
4 to carry out this section.

5 “(e) In order to qualify for the annual payments
6 under this section, the owner or operator shall certify an-
7 nually, pursuant to regulations issued by the Secretary,
8 that each vessel covered by an operating agreement was
9 operated in a trade required by section 651(b)(1) for at
10 least three hundred twenty days in a fiscal year, including
11 days during which the liner vessel is drydocked, surveyed,
12 inspected, or repaired.

13 “(f) Without regard to an operating agreement in ef-
14 fect with an owner or operator of a liner vessel under this
15 section, the Secretary of Transportation shall not make
16 any payment under this section for a vessel with respect
17 to any period in which the vessel is—

18 “(1) subject to an operating-differential subsidy
19 contract under subpart A of title VI of this Act;

20 “(2) not operated or maintained in accordance
21 with an operating agreement under this subpart; or

22 “(3) more than twenty-five years of age.

23 “(g) With respect to payments under this section for
24 a vessel covered by an operating agreement, the Secretary
25 of Transportation—

1 “(1) shall not reduce any payment for the oper-
2 ation of a vessel to carry military or other preference
3 cargoes under—

4 “(A) section 2631 of title 10, United
5 States Code; or

6 “(B) section 1241–1 of title 46, Appendix,
7 United States Code;

8 “(2) shall not make any payment for each day
9 that a vessel is engaged in transporting more than
10 five thousand tons of civilian bulk preference cargoes
11 pursuant to sections 901(a), 901(b), or 901b of this
12 Act; and

13 “(3) shall reduce any payment for each day
14 that a vessel is engaged in transporting less than
15 five thousand tons of civilian bulk preference cargoes
16 pursuant to sections 901(a), 901(b), or 901b of this
17 Act, by an amount which bears the same ratio to the
18 amount otherwise payable as revenue for the car-
19 riage of preference cargo bears to the gross revenue
20 derived from the entire voyage.

21 “(h) The Secretary of Transportation shall enter into
22 operating agreements in the following order of priority:

23 “(1) Liner vessel or vessels owned or operated
24 by a person that is a citizen of the United States
25 under section 2 of the Shipping Act, 1916; and then

1 “(2) Liner vessel or vessels owned or operated
2 by a person that is eligible to document a vessel
3 under chapter 121 of subtitle II of title 46, United
4 States Code.

5 “(i) No authority granted by the Secretary of Trans-
6 portation to an owner or operator of a vessel covered by
7 an operating agreement under this subpart may be sold,
8 assigned, conveyed, leased or otherwise transferred to any
9 other party, without the written consent of the Secretary
10 of Transportation pursuant to the provisions of section
11 608 of this title.

12 “(j) Any authority granted by the Secretary of Trans-
13 portation to an owner or operator of a vessel covered by
14 an operating agreement under this subpart shall be used
15 by the holder of the operating agreement within one year
16 from the date such authority is granted for existing vessels
17 and within two years from the date such authority is
18 granted for newly constructed vessels, or the authority
19 shall revert to the Secretary of Transportation for such
20 disposition as determined appropriate.

21 “(k) An operating agreement entered into by the Sec-
22 retary of Transportation under this subpart shall be effec-
23 tive for a period of not more than ten years, and, under
24 any condition, terminate not later than September 30,
25 2004.

1 “(l) An operating agreement entered into by the Sec-
2 retary of Transportation under this subpart shall require
3 the owner or operator of a vessel covered by an operating
4 agreement under this subpart to enroll in an Emergency
5 Preparedness Program, pursuant to the requirements of
6 section 652, under such terms and conditions as the Sec-
7 retary may prescribe.

8 **“SEC. 652. NATIONAL SECURITY REQUIREMENTS.**

9 “(a) On a request of the President, acting through
10 the Secretary of Transportation in consultation with the
11 Secretary of Defense, during time of war or national emer-
12 gency or when decided by the President to be necessary
13 in the national interest, acting through the Secretary of
14 Transportation in consultation with the Secretary of De-
15 fense, an owner or operator of a vessel covered by an oper-
16 ating agreement under this subpart shall make available
17 commercial transportation resources pursuant to an
18 Emergency Preparedness Program established by the Sec-
19 retary of Transportation in consultation with the Sec-
20 retary of Defense.

21 “(b) The commercial transportation resources to be
22 made available shall include ships, capacity, intermodal
23 systems or equipment, terminal facilities, and intermodal
24 and management services, or any portion of these re-
25 sources, as the Secretary may determine to be necessary.

1 “(c) The Secretary of Transportation shall not reduce
2 the amount of equal monthly installment payments under
3 section 651 to an owner or operator who makes commer-
4 cial transportation resources available pursuant to an
5 Emergency Preparedness Program under this section.

6 “(d) An owner or operator who makes a vessel avail-
7 able pursuant to this section shall be permitted to employ
8 a foreign-flag vessel in the foreign commerce of the United
9 States, without receiving additional compensation, as a re-
10 placement for a vessel covered by an operating agreement,
11 until a vessel used is redelivered.

12 **“SEC. 653. DOMESTIC NONCONTIGUOUS TRADE RESTRIC-**
13 **TIONS.**

14 “(a) PROHIBITION.—

15 “(1) IN GENERAL.—Except as provided in this
16 section, an owner or operator may not receive any
17 payment under this subpart—

18 “(A) if the owner or operator or a related
19 party with respect to the owner or operator, di-
20 rectly or indirectly owns, charters, or operates
21 a vessel engaged in the transportation of cargo
22 in a noncontiguous trade other than in accord-
23 ance with a waiver under subsection (b), (c), or
24 (d); or

1 “(B) if the owner or operator is authorized
2 to operate a vessel in noncontiguous trade
3 under such a waiver, and there is a—

4 “(i) material change in the domestic
5 ports served by the owner or operator from
6 the ports permitted to be served under the
7 waiver;

8 “(ii) material increase in the annual
9 number or the frequency of sailings by the
10 owner or operator from the number or fre-
11 quency permitted under the waiver; or

12 “(iii) material increase in the annual
13 volume of cargo carried or annual capacity
14 utilized by the owner or operator from the
15 annual volume of cargo or annual capacity
16 permitted under the waiver.

17 “(2) LIMITATIONS ON PROHIBITION.—Para-
18 graph (1) applies to an owner or operator only in
19 the years specified for payments under the operating
20 agreement entered into by the owner or operator.

21 “(b) GENERAL WAIVER AUTHORITY.—

22 “(1) IN GENERAL.—Except as provided in sub-
23 section (c), the Secretary may waive, in writing, the
24 application of subsection (a) to an owner or operator
25 pursuant to an application submitted in accordance

1 with this subsection, unless the Secretary finds
2 that—

3 “(A) the waiver would result in unfair
4 competition to any person that operates vessels
5 as a carrier of cargo in a service exclusively in
6 the noncontiguous trade for which the waiver is
7 applied;

8 “(B) subject to paragraph (6), existing
9 service in that noncontiguous trade is adequate;
10 or

11 “(C) the waiver will result in prejudice to
12 the objects or policy of this title or Act.

13 “(2) TERMS OF WAIVER.—Any waiver granted
14 by the Secretary under this subsection shall state—

15 “(A) the domestic ports permitted to be
16 served,

17 “(B) the annual number or frequency of
18 sailings that may be provided, and

19 “(C)(i) the annual volume of cargo per-
20 mitted,

21 “(ii) for containerized or trailer service, the
22 annual forty-foot equivalent unit shipboard con-
23 tainer and trailer or vehicle or general cargo ca-
24 pacity permitted, or

1 “(iii) for tug and barge service, the annual
2 barge house cubic foot capacity and the annual
3 barge deck general cargo capacity, or forty-foot
4 equivalent units container, trailer, or vehicle ca-
5 pacity, permitted.

6 “(3) APPLICATIONS FOR WAIVERS.—An appli-
7 cation for a waiver under this subsection may be
8 submitted by an owner or operator and shall de-
9 scribe, as applicable, the nature and scope of—

10 “(A) the service proposed to be conducted
11 in a noncontiguous trade under the waiver; or

12 “(B) any proposed material change or in-
13 crease in a service in a noncontiguous trade
14 permitted under a previous waiver.

15 “(4) ACTION ON APPLICATION AND HEARING.—

16 “(A) NOTICE AND PROCEEDING.—Within
17 thirty days after receipt of an application for a
18 waiver under this subsection, the Secretary
19 shall—

20 “(i) publish a notice of the applica-
21 tion;

22 “(ii) begin a proceeding on the appli-
23 cation section 554 of title 5, United States
24 Code, to receive—

1 “(I) evidence of the nature,
2 quantity, and quality of the existing
3 service in the noncontiguous trade for
4 which the waiver is applied;

5 “(II) a description of the pro-
6 posed service or proposed material
7 change or increase in a previously per-
8 mitted service;

9 “(III) the projected effect of the
10 proposed service or proposed material
11 change or increase in existing service;
12 and

13 “(IV) recommendations on condi-
14 tions that should be contained in any
15 waiver for the proposed service or ma-
16 terial change or increase.

17 “(B) INTERVENTION.—An applicant for a
18 waiver under this subsection, and any person
19 that operates cargo vessels in the noncontiguous
20 trade for which a waiver is applied and that has
21 any interest in the application, may intervene in
22 the proceedings on the application.

23 “(C) HEARING.—Before deciding whether
24 to grant a waiver under this subsection, the
25 Secretary shall hold a public hearing in an ex-

1 peditious manner, reasonable notice of which
2 shall be published.

3 “(5) DECISION.—The Secretary shall complete
4 all proceedings and hearings on an application under
5 this subsection and issue a decision on the record
6 within ninety days after receipt of the final briefs
7 submitted for the record.

8 “(6) LIMITATION ON CONSIDERATION OF CER-
9 TAIN EXISTING SERVICE.—

10 “(A) LIMITATION.—In determining wheth-
11 er to grant a waiver under this subsection for
12 noncontiguous trade with Hawaii, the Secretary
13 shall not consider the criterion set forth in
14 paragraph (1)(B) if a qualified operator—

15 “(i) is a party to an operating agree-
16 ment under this subpart, and

17 “(ii) operates four or more vessels in
18 foreign commerce in competition with an-
19 other operator who is a party to an operat-
20 ing agreement under this subpart.

21 “(B) QUALIFIED OPERATOR.—In this
22 paragraph, the term ‘qualified operator’ means
23 a person that on July 1, 1992, offered service
24 as an operator of containerized vessels, trailer
25 vessels, or combination container and trailer

1 vessels in domestic trade with Hawaii and the
2 Johnston Islands (including a related party
3 with respect to the person).

4 “(c) WAIVERS FOR EXISTING NONCONTIGUOUS
5 TRADE OPERATORS.—

6 “(1) IN GENERAL.—The Secretary shall waive
7 the application of subsection (a) to an owner or op-
8 erator, who is a party to an operating agreement
9 under this subpart, pursuant to an application sub-
10 mitted in accordance with this subsection if the Sec-
11 retary finds that the owner or operator, or a related
12 party or predecessor in interest with respect to the
13 owner or operator—

14 “(A) engaged in bona fide operation of a
15 vessel as a carrier of cargo by water—

16 “(i) in a noncontiguous trade on July
17 1, 1992; or

18 “(ii) in furnishing seasonal service in
19 a season ordinarily covered by its oper-
20 ation, during the twelve calendar months
21 preceding July 1, 1992; and

22 “(B) has operated in that service since
23 that time, except for interruptions of service re-
24 sulting from military contingency or over which

1 the owner or operator (or related party or pred-
2 cessor in interest) had no control.

3 “(2) TERMS OF WAIVER.—

4 “(A) IN GENERAL.—Except as otherwise
5 provided in this paragraph, the level of service
6 permitted under a waiver under this subsection
7 shall be the level of service provided by the ap-
8 plicant (or related party or predecessor in inter-
9 est) in the relevant noncontiguous trade during,
10 for year-round service, the six calendar months
11 preceding July 1, 1992, or for seasonal service,
12 the twelve calendar months preceding July 1,
13 1992, determined by—

14 “(i) the domestic ports called;

15 “(ii) the number of sailings actually
16 made, except as to interruptions in the
17 service in the noncontiguous trade result-
18 ing from military contingency or over
19 which the applicant (or related party or
20 predecessor in interest) had no control;
21 and

22 “(iii) the volume of cargo carried or,
23 for containerized or trailer service, the
24 forty-foot equivalent unit shipboard con-
25 tainer, trailer, or vehicle or general cargo

1 capacity employed, or, for tug and barge
2 service, the barge house cubic foot capacity
3 and barge deck general cargo capacity or
4 forty-foot equivalent unit container, trailer,
5 or vehicle capacity, employed.

6 “(B) CERTAIN CONTAINERIZED VES-
7 SELS.—If an applicant under this subsection
8 was offering service as an operator of container-
9 ized vessels in noncontiguous trades with Ha-
10 waii, Puerto Rico, and Alaska on July 1, 1992,
11 a waiver under this subsection for the applicant
12 shall permit a level of service consisting of—

13 “(i) One hundred and four sailings
14 each year from the West Coast of the
15 United States to Hawaii with an annual
16 capacity allocated to the service of 75 per
17 centum of the total capacity of the vessels
18 employed in the service on July 1, 1992;

19 “(ii) One hundred fifty-six sailings
20 each year in each direction between the
21 East Coast or Gulf Coast of the United
22 States and Puerto Rico with an annual ca-
23 pacity allocated to the service of 75 per
24 centum of the total capacity of its vessels
25 employed in the service on the date of the

1 enactment of the Maritime Security and
2 Trade Act of 1994; and

3 “(iii) One hundred and three sailings
4 each year in each direction between Wash-
5 ington and Alaska with an annual capacity
6 allocated to the service in each direction of
7 100 per centum of the total capacity of its
8 vessels employed in the service on July 1,
9 1992.

10 “(C) CERTAIN TUGS AND BARGES.—If an
11 applicant under this subsection was offering
12 service as an operator of tugs and barges in
13 noncontiguous trades with Hawaii, Puerto Rico,
14 and Alaska on July 1, 1992, a waiver under
15 this subsection for the applicant shall permit a
16 level of service consisting of—

17 “(i) Seventeen sailings each year in
18 each direction between ports in Washing-
19 ton, Oregon, and Northern California and
20 ports in Hawaii with an annual barge
21 house cubic foot capacity and annual barge
22 deck forty-foot equivalent unit container
23 capacity in each direction of 100 per cen-
24 tum of the total of the capacity of its ves-
25 sels employed in the service during the six

1 calendar months preceding July 1, 1992,
2 annualized;

3 “(ii) Two hundred fifty-three sailings
4 each year in each direction between the
5 East Coast or Gulf Coast of the United
6 States and Puerto Rico with an annual
7 forty-foot equivalent unit container or
8 trailer capacity equal to 100 per centum of
9 the capacity of its barges employed in the
10 service on the date of the enactment of the
11 Maritime Security and Trade Act of 1994;

12 “(iii) Thirty-seven regularly scheduled
13 tandem tow rail barge sailings and ten ad-
14 ditional single tow rail barge sailings each
15 year in each direction between Washington
16 and the Alaskan port range between and
17 including Anchorage and Whittier with an
18 annual capacity allocated to the service in
19 each direction of 100 per centum of the
20 total rail car capacity of its vessels em-
21 ployed in the service on July 1, 1992;

22 “(iv) Eight regularly scheduled single
23 tow sailings each year in each direction be-
24 tween Washington and points in Alaska
25 (not including the port range between and

1 including Anchorage and Whittier, except
2 occasional deviations to discharge inciden-
3 tal quantities of cargo) with an annual ca-
4 pacity allocated to the service in each di-
5 rection of 100 per centum of the total ca-
6 pacity of its vessels employed in the service
7 on July 1, 1992; and

8 “(v) unscheduled, contract carrier tug
9 and barge service between points in Alaska
10 south of the Arctic Circle not served by the
11 common carrier service permitted under
12 clause (iii) and points in the contiguous
13 forty-eight States, with an annual capacity
14 allocated to that service not exceeding 100
15 per centum of the total capacity of the
16 equipment that was dedicated to service
17 south of the Arctic Circle on July 1, 1992,
18 and actually utilized in that service in the
19 two-year period preceding that date.

20 “(D) ANNUALIZATION.—Capacity other-
21 wise required by this paragraph to be permitted
22 under a waiver under this subsection shall be
23 annualized if not a seasonal service.

24 “(E) ADJUSTMENTS.—

1 “(i) Each written waiver granted by
2 the Secretary under this subsection shall
3 contain a statement that the annual capac-
4 ity permitted under this waiver in any di-
5 rection shall increase for a calendar year
6 by the percentage of increase during the
7 preceding calendar year in the real gross
8 product of the State or territory to which
9 goods are transported in the noncontiguous
10 trade covered by the waiver, or its equiva-
11 lent economic measure as determined by
12 the Secretary if the real gross product is
13 not available, and that the increase shall
14 not be considered to be a material change
15 or increase for purposes of subsection
16 (a)(1)(B).

17 “(ii) The increase in permitted capac-
18 ity under clause (i) in the noncontiguous
19 trade with Alaska shall be allowed only to
20 the extent the operator actually uses that
21 increased capacity to carry cargo in the
22 permitted service in the calendar year im-
23 mediately following the preceding increase
24 in gross product. However, if an operator
25 operating exclusively containerized vessels

1 in trade on July 1, 1992, carries an aver-
2 age load factor of at least 90 per centum
3 of permitted capacity (including the capac-
4 ity, if any, both authorized and used under
5 the previous sentence) during nine months
6 of any one calendar year, than in the next
7 following calendar year and thereafter, the
8 requirement that additional capacity must
9 be used in the immediately following year
10 does not apply.

11 “(F) SERVICE LEVELS NOT INCREASED BY
12 TERMINATION OF AGREEMENT.—The termi-
13 nation of an operating agreement under subpart
14 B of this title shall not be considered to in-
15 crease a level of service specified in subpara-
16 graph (A), (B), or (C) if the contractor under
17 the agreement enters into another operating
18 agreement after that termination.

19 “(3) APPLICATIONS FOR WAIVERS.—For a
20 waiver under this subsection a contractor shall sub-
21 mit to the Secretary an application certifying the
22 facts required to be found under paragraph (1) (A)
23 or (B), as applicable.

24 “(4) ACTION ON APPLICATION.—

1 “(A) NOTICE.—The Secretary shall pub-
2 lish a notice of receipt of an application for a
3 waiver under this subsection within thirty days
4 after receiving the application.

5 “(B) HEARING PROHIBITED.—The Sec-
6 retary may not conduct a hearing on an appli-
7 cation for a waiver under this subsection.

8 “(C) SUBMISSION OF COMMENTS.—The
9 Secretary shall give every person operating a
10 cargo vessel in a noncontiguous domestic trade
11 for which a waiver is applied for under this sub-
12 section and who has any interest in the applica-
13 tion a reasonable opportunity to submit com-
14 ments on the application and on the description
15 of the service that would be permitted by any
16 waiver that is granted by the Secretary under
17 the application.

18 “(5) DECISION ON APPLICATION.—Subject to
19 the time required for publication of notice and for
20 receipt and evaluation of comments by the Sec-
21 retary, an application for a waiver under this sub-
22 section submitted at the same time the applicant ap-
23 plies for inclusion of a vessel in the fleet established
24 under this subpart shall be granted in accordance
25 with the level of service determined by the Secretary

1 under this subsection by not later than the date on
2 which the Secretary offers to the applicant an oper-
3 ating agreement with respect to that vessel.

4 “(6) CHANGE OR INCREASE IN SERVICE.—Any
5 material change or increase in a service that is sub-
6 ject to a waiver under this subsection is not author-
7 ized except to the extent the change or increase is
8 permitted by a waiver under subsection (b).

9 “(d) EMERGENCY WAIVER.—Notwithstanding any
10 other provision of this section, the Secretary may, without
11 hearing, temporarily waive the application of subsection
12 (a)(1)(B) if the Secretary finds that a material change or
13 increase is essential in order to respond adequately to (1)
14 an environmental or natural disaster or emergency, or (2)
15 another emergency declared by the President. Any waiver
16 shall be for a period of not to exceed forty-five days, except
17 that a waiver may be renewed for thirty-day periods if the
18 Secretary finds that adequate capacity continues to be
19 otherwise unavailable.

20 “(e) ANNUAL REPORT ON WAIVERS.—Each waiver
21 under this section shall require the person who is granted
22 the waiver to submit to the Secretary each year an annual
23 report setting forth for the service authorized by the waiv-
24 er—

25 “(1) the ports served during the year;

1 “(2) the number of frequency of sailings per-
2 formed during the year; and

3 “(3) the volume of cargo carried or, for contain-
4 erized or trailer service, the annual forty-foot equiva-
5 lent unit shipboard container, trailer, or vehicle ca-
6 pacity utilized during the year, or for tug and barge
7 service, the annual barge house and barge deck ca-
8 pacity utilized during the year.

9 “(f) DEFINITIONS.—In this section—

10 “(1) the term ‘noncontiguous trade’ means
11 trade between—

12 “(A) a point in the contiguous forty-eight
13 States; and

14 “(B) a point in Alaska, Hawaii, or Puerto
15 Rico, other than a point in Alaska north of the
16 Arctic Circle; and

17 “(2) the term ‘related party’ means—

18 “(A) a holding company, subsidiary, affili-
19 ate, or associate of a owner or operator who is
20 a party to an operating agreement under this
21 subpart; and

22 “(B) an officer, director, agency, or other
23 executive of a contractor or of a person referred
24 to in subparagraph (A).

1 **“SEC. 654. DEFINITIONS.**

2 “For the purposes of subpart B of this title:

3 “(1) The term ‘citizen of the United States’
4 means a person that is a citizen of the United States
5 under section 651 of this subpart.

6 “(2) The term ‘operating agreement’ means an
7 operating agreement that takes effect under section
8 651 of this subpart and covers one or more ves-
9 sels.”.

10 (f) EFFECTIVE DATE.—The amendments made by
11 subsections (a) through (e) of this section shall be effective
12 beginning on the date which is one hundred twenty days
13 after the date of enactment of the Maritime Security and
14 Trade Act of 1994.

15 **SEC. 203. TONNAGE FEES.**

16 (a) INCREASE OF DUTIES.—Section 36 of the Act of
17 August 5, 1909 (46 App. U.S.C. 121) is amended in the
18 second paragraph by—

19 (1) inserting after “1998,” the first place it ap-
20 pears “and a supplemental duty of 15 cents per ton,
21 not to exceed in the aggregate 75 cents per ton in
22 any one year, for fiscal years 1995 through 2004,”;
23 and

24 (2) inserting after “1998,” the second place it
25 appears, “and a supplemental duty of 44 cents per

1 ton, not to exceed \$2.20 per ton in any one year, for
2 fiscal years 1995 through 2004.”.

3 (b) OFFSETTING RECEIPTS.—The increased tonnage
4 fees collected as a result of the amendments made by sub-
5 section (a) shall be deposited in the general fund of the
6 Treasury as offsetting receipts of the department in which
7 the Coast Guard is operating and ascribed to Coast Guard
8 activities.

9 **SEC. 204. USE OF FOREIGN-FLAG VESSELS.**

10 Section 804 of Title VIII of the Merchant Marine
11 Act, 1936, as amended (46 App. U.S.C. 1222), is
12 amended by adding a new subsection (f) as follows:

13 “(f) The provisions of subsection (a) of this section
14 shall not preclude an owner or operator receiving operat-
15 ing assistance under subpart A or subpart B of title VI,
16 or any holding company, subsidiary, affiliate or associate
17 of such owner or operator, or any officer, director, agency,
18 or executive thereof from—

19 “(1) owning, chartering, or operating any for-
20 eign-flag vessel that is operated as a feeder vessel
21 for a United States-flag service under an operating
22 agreement pursuant to subpart B of title VI;

23 “(2) owning, chartering, or operating any for-
24 eign-flag vessel in line haul service between the
25 United States and foreign ports: *Provided*, That the

1 foreign-flag vessel was operated by that owner or op-
2 erator on the date of enactment of this Act; or that
3 the owner or operator, with respect to each addi-
4 tional foreign-flag vessel, has first applied to have
5 that vessel added to the existing operating agree-
6 ment, and the Secretary denies the application: *And*
7 *provided further*, That any foreign-flag vessel in line
8 haul service between the United States and foreign
9 ports is (a) registered under the flag of an effective
10 United States-controlled foreign flag, and (b) avail-
11 able to be requisitioned by the Secretary of Trans-
12 portation pursuant to section 902 of this Act;

13 “(3) owning, chartering, or operating foreign-
14 flag liner vessels that are operated exclusively in for-
15 eign-to-foreign service and not in the foreign com-
16 merce of the United States;

17 “(4) owning, chartering, or operating foreign-
18 flag bulk cargo vessels that are operated in both for-
19 eign-to-foreign service and the foreign commerce of
20 the United States;

21 “(5) chartering or operating foreign-flag vessels
22 that are operated solely as replacement vessels for
23 United States-flag vessels that are made available to
24 the Secretary of Defense pursuant to section 652 of
25 subpart B of title VI; or

1 “(6) entering into space charter agreements
2 with foreign-flag carriers or acting as agent or
3 broker for a foreign-flag vessel or vessels.”.

4 **SEC. 205. DEFINITION OF PRIVATELY OWNED UNITED**
5 **STATES-FLAG COMMERCIAL VESSELS.**

6 The third sentence of section 901(b)(1) of title IX
7 of the Merchant Marine Act, 1936, as amended (46 App.
8 U.S.C. 1241(b)(1)) is deleted in its entirety and the fol-
9 lowing is inserted in lieu thereof: “For purposes of this
10 section, the term ‘privately owned United States-flag com-
11 mercial vessels’ shall be deemed to include (1) any pri-
12 vately owned United States flag commercial vessel con-
13 structed in the United States, (2) any privately owned
14 liner vessel constructed, reconstructed, or acquired outside
15 the United States that is documented pursuant to chapter
16 121 of title 46, United States Code and is less than five
17 years of age on the date of such documentation, and (3)
18 any bulk cargo vessel constructed in or delivered by a ship-
19 yard outside the United States after January 1, 1993. The
20 term ‘privately owned United States-flag commercial ves-
21 sels’ shall also be deemed to include any liner or bulk
22 cargo vessel that so qualified pursuant to section 615 of
23 title VI or section 901(b)(1) of title IX of this Act, prior
24 to enactment of the Maritime Security and Trade Act of
25 1994. The term ‘privately owned United States-flag com-

1 merical vessels' shall not be deemed to include any liquid
2 bulk cargo vessel that does not meet the requirements of
3 section 3703a of title 46, United States Code.'".

4 **SEC. 206. USE OF FOREIGN-FLAG FEEDER VESSELS IN**
5 **CARRIAGE OF PREFERENCE CARGOES.**

6 The provisions of law set forth in 46 App. U.S.C.
7 1241(b)(1), 1241-1, and 1241f, requiring use of United
8 States-flag vessels shall, with respect to liner vessels, be
9 deemed fulfilled, as to the total of any shipment other than
10 that of the Department of Defense covered by 10 U.S.C.
11 2631, if the actual ocean transportation of each shipment
12 for which the United States-flag carrier has issued its own
13 through bill-of-lading between the original port of lading
14 and the port of final discharge, consists of transportation
15 of the cargo by a combination of United States-and for-
16 eign-flag vessels: *Provided*, That, measured by distance,
17 the United States-flag line haul portion of each voyage is
18 greater than the foreign-flag feeder portion of each voyage
19 pursuant to regulations issued by the Secretary of Trans-
20 portation.

21 **SEC. 207. LIMITATION ON RESTRICTIONS.**

22 Notwithstanding any other provision of law or con-
23 tract, all restrictions and requirements set forth in 46
24 App. U.S.C. 1153, 1156, and 1212, applicable to a vessel
25 constructed, reconstructed or reconditioned with the aid

1 of construction-differential subsidy shall terminate: (1) for
2 a liner or dry bulk cargo vessel, upon the expiration of
3 the twenty-five-year period beginning on the date of origi-
4 nal delivery of the vessel from the shipyard, and (2) for
5 a liquid bulk cargo vessel, upon the expiration of the twen-
6 ty-year period beginning on the date of original delivery
7 of the vessel from the shipyard.

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